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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1974

ALAMO LAND AND CATTLE CO., INC.

Petitioner

vs. NO. 74-125

THE STATE OF ARIZONA,

Respondent

BRIEF FOR THE STATE OF NEW MEXICO AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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INTEREST OF THE STATE OF NEW MEXICO

The State of New Mexico owns in excess of nine million (9,000,000) acres of land which have been leased to ranchers for grazing purposes for successive five (5) year terms from statehood in 1912 to the present time. These leases are executed on behalf of the State by the Commissioner of Public Lands who is the constitutional agent operating under the Enabling Act, the Constitution, and New Mexico Statutes. See Article XIII, New Mexico Constitution.

If the decision of the Ninth Circuit is left undisturbed, it will nullify numerous New Mexico legislative enactments upon which ranchers

and financial institutions engaged in making farm and ranch loans have relied in their business dealings for over sixty (60) years.

Under the above circumstances, failure by the State of New Mexico to speak out at this time would constitute a breach of faith toward that segment of the economy of the State. For this and other reasons hereinafter set forth, the Honorable Bruce King, Governor of the State of New Mexico, and Alex J. Armijo, its Land Commissioner, have requested that this brief be filed on behalf of the State of New Mexico by its Attorney General pursuant to Paragraph 4 of Supreme Court Rule 42.

STATEMENT OF THE CASE

The United States brought this action by way of condemnation. The property involved consists of two tracts of land designated in the record as tracts 304 and 305, which tracts are owned by the State of Arizona, having been acquired as part of the grant by the United States under the New Mexico-Arizona Enabling Act (Act of June 20, 1910, 36 U.S. Stat. 557, as amended June 2, 1951, 65 Stat. 50). The lands were granted for the support of public schools and are subject to the restrictions set forth in Sec. 28 of the Act. At the time the condemnation suit was filed, the lands involved had been leased by the State of Arizona (Arizona) to the Petitioner, Alamo Land and Cattle Co., Inc. (Alamo), under a ten year grazing lease.

Subsequent to the filing of the condemnation, Arizona and Alamo stipulated with the

United States that full just compensation for the property and improvements thereon was the sum of $118,620.00. Following a distribution hearing, the District Court awarded Alamo the sum of $3,600.00 for its improvements and $57,050.00 for its present leasehold interest and awarded Arizona the balance of the award.

On appeal by Arizona to the Ninth Circuit, the judgment awarding compensation to Alamo for its present leasehold interest was reversed and all the compensation, excepting that relating to improvements, was ordered paid to Arizona.

REASONS FOR GRANTING THE WRIT

New Mexico and Arizona are sister states having been admitted under the same Enabling Legislation. In this connection, Section 10 of the New Mexico Enabling Act (Act of June 20, 1910, 36 Stats. at Large 557, Chapter 310) provides:

> "....No mortgage or other encumbrance of the said lands, or any thereof, shall be valid in favor of any person or for any purpose or under any circumstances whatsoever. Said lands shall not be sold or leased, in whole or in part, except to the highest and best bidder at a public auction to be held at the county seat of a county wherein the lands to be affected, or the major portion thereof, shall lie, notice of which public auction shall first have been duly given by advertisement, which shall set forth the nature, time,

and place of the transaction to be had, with a full description of the lands to be offered, and be published once each week for not less than ten successive weeks in a newspaper of general circulation published regularly at the state capital, and in that newspaper of like circulation which shall then be regularly published nearest to the location of such lands so offered; nor shall any sale or contract for the sale of any timber or other natural product of such lands be made, save at the place, in the manner, and after the notice by publication thus provided for sales and leases of the lands themselves: **Provided, That nothing therein contained shall prevent said proposed state from leasing any of said lands referred to in this section for a term of five years or less without said advertisement herein required.** (Emphasis Supplied).

The Arizona Enabling Act differs only that it provides for a ten (10) year lease.

Since statehood in 1912, the New Mexico legislature has interpreted this section to mean that the State can and does give a lessee a vested leasehold estate for the term of his lease which could cover a period from 1 to 5 years being at the discretion of the Commissioner of Public Lands. This interpretation is in line with the case of **Nebraska v. U.S.**, 164 F2d 866 (1947).

In this connection, attention is directed to the following statutes:

7-8-31, N.M.S.A., 1953 Compilation, originally being Section 14 of the Laws of New Mexico 1912, authorizes the Commissioner of Public Lands to issue leases for periods not to exceed five (5) years.

7-8-37, N.M.S.A., 1953 Compilation, originally being Section 1, Chapter 130, Laws of New Mexico 1935, prohibits the Commissioner of Public Lands from cancelling such leases before the expiration of the full stated term, except for specific breaches.

7-8-39 thru 7-8-45, N.M.S.A., 1953 Compilation, originally being Chapter 126, Laws of New Mexico 1933, sets up a procedure for a lessee to pledge his improvements and leasehold interest as security for a loan.

In **American Mortgage Company v. White,** 34 N.M. 602, 387 Pac. 702, the New Mexico Supreme Court held that such arrangement did not violate the prohibition against encumbrances set out in Section 10 of the Enabling Act hereinabove. Also, the New Mexico Supreme Court in **State ex rel. State Highway Commission v. Chavez,** 80 N.M. 394, 456 P2d 868, held that a lessee's interest in a five year or less lease had a value even though the renewal was entirely at the discretion of the Commissioner of Public Lands.

It is submitted that this long standing legislative and court interpretation in New Mexico, as it relates to Section 10 of its Enabling Act

and which follows the **Nebraska v. U.S. supra,** is the correct one, and that neither **Lassen v. Arizona State Highway Department,** 385 U.S. 458, 87 SCt. 584, 17 L.Ed. 515, nor **State ex rel. State Highway Department v. Walker,** 61 N.M. 301 P2d 317, modify the Nebraska or New Mexico decisions. The Lassen and Walker cases hold that the State Highway Departments of the respective States must compensate the trust for rights of way over and across and for sand and gravel removed from trust lands. They have no relationship to the case at bar.

The ruling of **Nebraska v. U.S.** should be applied to the comparable ten year lease provision in the Arizona Enabling Act. It is recognized, however, that the result of the Arizona decision herein might well be the same for the reason that Arizona's ten year lease is actually only a license which can be terminated upon thirty (30) day notice by the State of Arizona in case the State Land Board wishes to reclassify the lands (Grazing Rule 31 and Lease Form A-11, Paragraph P). However, as the case may be, the Ninth Circuit decision based on an Enabling Act consideration is not what Congress intended and such a ruling if not modified will effectively nullify the sixty (60) year old policy in New Mexico which was designed to give a limited tenure as an inducement to conservation and preservation of grazing lands. The decision could also result in recall and loss of loans with further disasterous effects in New Mexico. Therefore, the decision of the Ninth Circuit cannot and should not stand upon Enabling Act considerations.

Respectfully submitted,

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